

BOOTA SINGH v. ISMAN BIN H. ALI

[A.C.J. (Whyatt C.J.) May 17, 1957]

[Singapore — District Court Appeal No. 3 of 1956]

Limitation Ordinance (Cap. 7), s. 3 — "Every suit instituted" — Meaning of — The expressions "suit instituted" or "action commenced".

The question for decision in this appeal was whether the Limitation Ordinance ceases to run when the plaintiff requests the Court clerk to prepare the summons or whether it continues to run until the summons is actually sealed and issued.

Held: the Limitation Ordinance continues to run until the summons is actually sealed and when the summons is sealed it is deemed to be issued and the action is then commenced.

Case referred to:—

(1) *Hood Barrs v. Cathcart* (1894) 3 Ch. 376.

DISTRICT COURT APPEAL.

K. K. Bezboruah for the plaintiff (respondent).

Dennis Lee for the defendant (appellant).

Whyatt C.J. : — The question I have to decide in this appeal is whether the Limitation Ordinance ceases to run when the plaintiff requests the Court clerk to prepare the summons or whether it continues to run until the summons is actually sealed and issued. The difference between the two may be several days, depending upon the congestion of work in the Courts, and may, in practice, be of great significance if the limitation period expires between the two dates. In the present case the material dates are as follows: on the 3rd August the plaintiff requested the summons clerk to prepare the summons, on the 15th August the period of limitation expired, on the 19th August the summons was sealed and issued. The learned District Judge held that the suit was instituted when the plaintiff requested the summons clerk to prepare the summons on the 3rd August and consequently the claim was not statute barred. The defendant appeals against this decision on the ground that the suit was not instituted within the meaning of section 3 of the Limitation Ordinance until the summons was sealed and issued on the 19th August, that is to say, four days after the expiry of the limitation period.

The learned District Judge stated quite correctly that the question at issue turns upon the construction to be placed upon the words "every suit instituted after the period of limitation" which occur in section 3 of the Ordinance.

The expression "suit instituted" is synonymous, in my view, with "action commenced", an expression which is frequently found in ordinances and rules of court, and if there were any doubt on this point, it would, in my opinion, be disposed of by the judgments in *Hood Barrs v. Cathcart*⁽¹⁾. In that case the Court

was called upon to construe the words "any proceeding ... instituted" and in the course of his judgment Lopes L.J. said, "the expression 'proceeding instituted' conveys to my mind the idea of some action commenced ..."; likewise Davey L.J., in a concurring judgment, expressed the view that "instituted" was an apt word to apply to the commencement of a suit.

The issue between the parties in this case, therefore, resolves itself into an inquiry as to when, technically speaking, an action is commenced. So far as proceedings in the High Court are concerned, it has never, as far as I am aware, been questioned that the issue of a writ of summons commences an action and this is confirmed by a note in the Annual Practice 1957 at page 13 where it is stated, "when a writ is sealed it is deemed to be issued and the action is then commenced". Now in this particular matter the procedure of the District Court is the same, *mutatis mutandis*, as the procedure of the High Court. The summons of the District Court corresponds to the writ of summons of the High Court and Order 8 r. 2 of the District Court Rules (which provides that a summons shall be sealed and shall thereupon be deemed to be issued) corresponds to Order V r. 2 of the Supreme Court Rules. It follows, therefore, by parity of reasoning, that an action is commenced in the District Court when the summons is sealed and issued and not before. It is, of course, true that the summons must be prepared before it can be sealed and issued and that the preparation necessarily takes a little time. The plaintiff may choose, under Order 6 r. 3, between preparing the summons himself or instructing a solicitor to prepare it or requesting the summons clerk to do it. Some of these methods may take longer than others and perhaps the method selected by the plaintiff in this case, through nobody's fault, took longer than was expected. Be that as it may, such considerations cannot affect the question of construction. The expression "suit instituted" in section 3 of the Limitation Ordinance must be given the same meaning whether the summons is prepared by the plaintiff himself or by his solicitor or by the summons clerk. No one has had the temerity to suggest that where the plaintiff or his solicitor prepares the summons, the suit is instituted as from the date on which the preparation commences, and the same reasoning must apply when the preparation is undertaken by the summons clerk.

For these reasons I am of the opinion that the present suit was not instituted until the summons was sealed and issued on the 19th August and therefore the defendant's plea of limitation must succeed. The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: Lee & Lee; K. K. Bezboruah.